

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**LIPARI FOODS, INC.**

**Employer**

**and**

**Case 7-RC-22446**

**LOCAL 337, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO**

**Petitioner**

APPEARANCES:

William L. Hooth, Attorney, of Troy, Michigan, for the Employer.

Wayne A. Rudell, Attorney, of Dearborn, Michigan, for the Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The Employer and Petitioner filed briefs, which were carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

## **Overview**

Petitioner seeks a single facility unit of approximately 42 full-time and regular part-time route and shuttle drivers who work out of the Employer's facility located at 14523 Frahzo Road, Warren, Michigan.<sup>2</sup> The Employer asserts the petitioned-for unit must include all 111 route and shuttle drivers system-wide located throughout Michigan as well as in Ohio, Indiana, and Kentucky.

Given the geographic distance between the groups of employees, the limited interchange of employees, and the presence of lead employees at most distribution sites who are responsible for providing oversight to the drivers, the Employer has not overcome the single facility presumption despite centralized administration of wages and benefits, and the similarity of work.

## **Business Operations**

The Employer is a distributor of wholesale deli and bakery products, and other groceries, including packaging products, from its central warehouse in Warren, Michigan. The Employer maintains truck distribution routes extending from northern Michigan to southern Georgia, and as far east as Akron, Ohio, and as far west as Chicago, Illinois.

Orders and products are received at the Employer's Warren facility. Thirty-one route drivers based out of the Warren facility pick up goods and products directly from the Warren facility to deliver to stores in the metropolitan Detroit area. Eleven shuttle drivers based in Warren drive the products to distribution points, primarily Ryder truck rental terminals, in Michigan and Ohio.<sup>3</sup> Some shuttle drivers from these outlying distribution points also drive to the Warren facility to pick up their loads. These shuttle drivers return to their original distribution points to distribute those loads to local route drivers.<sup>4</sup>

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<sup>2</sup> At the hearing, Petitioner proposed an alternative unit limited to route drivers at the Warren facility. While such a unit might also be appropriate, it is not necessary to reach that issue.

<sup>3</sup> Distribution points are located in Kalamazoo, Houghton Lake, Grand Rapids, and Cadillac, Michigan; and Akron, Brook Park, and Dayton, Ohio.

<sup>4</sup> Such shuttle drivers originate in Kalamazoo, Grand Rapids, Cadillac, Houghton Lake, and Saginaw, Michigan, and Columbus, Ohio.

Lead drivers, who can be shuttle drivers or route drivers, are designated by the Employer to oversee most distribution points. At those distribution points, shuttle drivers work with lead drivers and their helpers to transfer the product to route drivers' trucks. At some locations, shuttle drivers transfer goods to other shuttle drivers who transport the product to additional distribution points in Hammond, Indiana, Indianapolis, Indiana, and Georgetown, Kentucky, where the product is then transferred to route drivers' trucks.

Route drivers deliver the Employer's products to pizza stores, grocery stores, and delicatessens. Once the driver is at the customers' store locations, customers give direction to the route drivers on how to handle the product and where to put it.

## **Supervision**

Tom Lipari is the Employer's owner and president. His office is located at the Warren facility. Vice President Randy Mareel<sup>5</sup> and Transportation Manager Gary Connor both report to Lipari, and have offices at the Warren facility. There is a router named Steve Hughs.<sup>6</sup>

Connor is responsible for scheduling the Employer's drivers and authorizing all expenditures for service to the vehicles system-wide. Drivers communicate with Connor by radio and telephone to report problems and discuss other matters, although they do not necessarily do so daily. Connor has held his job for a relatively short period of time, three months. During that time, he has traveled to outlying distribution points on a monthly basis, unless there is a problem or a new account that requires greater travel frequency. Connor also administers the attendance and absenteeism policies that are applicable to all drivers.

Brian Zillo is the human resource manager. Zillo maintains employee time records. While Connor conducts the interviews and screens resumes, Zillo approves the final hiring decisions. Connor administers discipline to drivers, and Zillo ensures that the discipline follows the Employer's procedure. Zillo maintains the drivers' disciplinary files at his Warren office.

## **Lead Drivers**

The Employer employs lead drivers at most distribution points, as well as at its Warren facility.<sup>7</sup> Lead drivers earn \$.50/hour more than other drivers. Lead drivers

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<sup>5</sup> The record is silent with regard to Mareel's duties.

<sup>6</sup> Hughs' supervisory status was not developed at the hearing.

<sup>7</sup> The Petitioner and the Employer witnesses gave varying accounts of the number of lead drivers. The Employer's human resources manager, Brian Zillo, stated that Jerry Price was the "supervisor" for the nine route drivers in Georgetown and that David Maple was the "supervisor" at the Akron facility while other witnesses characterized them as "lead drivers." Zillo also stated that there were five lead drivers: two in Warren, and three elsewhere.

oversee the product distribution process both in Warren and at the other distribution points, and ensure that shuttle and route drivers load and deliver the proper goods and products. For the most part, lead drivers provide instructions to route and shuttle drivers on how to load a truck, what should be loaded on the truck, and who to contact if a truck breaks down. Lead drivers help train new drivers. At the distribution points where there is a Ryder office, the lead driver opens up that rental office and holds driver meetings with the route drivers.

It is within a lead driver's discretion to designate which shuttle driver picks up moneybags and paperwork, and which shuttle driver brings back returned products, although lead drivers do not assign routes. The lead driver is responsible for writing a note for the transportation manager to advise him if route drivers call in sick or do not show up for work. Unlike other drivers who wear gray/red stripped shirts, lead drivers wear white shirts with the Employer's insignia and black pants.

### **Working Conditions**

All the shuttle and route drivers receive the same benefits, health insurance, and 401(k) programs, administered through the Warren office, and are subject to the same employee handbook. The Employer utilizes the same employment application for all employees system-wide. Upon hire, all drivers go through an orientation program at the Warren warehouse.

Shuttle and route drivers earn a starting hourly rate of \$14.74. After six months, a route driver is entitled to a commission of \$1.25 for every \$1,000 of products delivered to customers. If shuttle drivers make a customer delivery, they too qualify for the commission. Shuttle drivers receive a pallet allowance of \$.50 for each pallet they return to the Warren warehouse in excess of the number when they left the warehouse. After one year, drivers earn \$15.75 and after two years \$16.25, in addition to commissions and pallet allowances.

Schedules for shuttle drivers system-wide are posted weekly in Warren. On the shuttle driving posting, the Employer groups their names by point of origin. Route and shuttle drivers throughout the system generally have their permanent residences near their assigned distribution point.

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Transportation Manager Gary Connor testified that there were three lead drivers in Kalamazoo, Georgetown, and Akron. Petitioner's witness William McKinney indicated that there were lead drivers at all the distribution points, except Dayton. According to McKinney, the two lead shuttle drivers at Warren are Terry Rachwal and Donald Busch; John Zaruda is the lead driver in Brook Park; Kevin Eckert is the lead driver in Kalamazoo; Mike Staley is the lead driver in Grand Rapids; Scott \_\_\_\_\_ is the lead driver in Cadillac; either Pat Forrester or Bob Fenton is the lead driver in Houghton; Jerry Price is the lead driver in Georgetown; and David Maple is the lead driver in Akron. Dave Woosley is the senior route driver in Columbus, and apparently functions as a lead driver at the site.

The Employer leases its trucks through Ryder truck rental and the contract includes maintenance. Neither shuttle nor route drivers necessarily drive the same truck every day.

### **Shuttle Drivers At Warren**

Shuttle drivers based at Warren begin working at 9:30 p.m., midnight, or 1:00 a.m. where they clock in and out. Most shuttle drivers begin at 1 a.m. and drive to one of the distribution points in Grand Rapids, Houghton Lake, Saginaw, Jackson, Kalamazoo, Brook Park, Akron, or Dayton. Once at the distribution site, the shuttle driver offloads his truck onto route trucks or other shuttles, collects payments from route trucks, collects money from route truck safes, and sometimes changes trailers with another shuttle driver so the trailer can continue to its destination. Route drivers occasionally assist shuttle drivers in changing trucks and off loading products, but do so only if the shuttle driver is very late. Route drivers generally do not spend much time with the shuttle drivers, and instead sit in the Ryder driver's lounge awaiting instructions from a lead driver. The unloading process can take from half an hour to two hours.

On the return trip, shuttle drivers transport empty pallets and return products. Once the shuttle drivers return to Warren, they are responsible for depositing money and paperwork collected from the route drivers into a drop safe. Shuttle drivers do not travel to the same area every day. Within a given week, a shuttle driver may travel to four or five different distribution points. Shuttle drivers also pick up and back haul specialized products on their return to the Warren facility. For example, a shuttle driver may pick up sugar at the Saginaw distribution point and bring it back to the Warren facility.

### **Shuttle Drivers Outside Warren**

Sixteen shuttle drivers based outside Warren call their starting and ending times into the Warren facility. They park their personal vehicles at their assigned distribution point, generally a Ryder facility leased by the Employer, when they are on the road. There is one shuttle driver based in Hammond, Indiana; one shuttle driver is based in Indianapolis, Indiana; two shuttle drivers originate in Georgetown, Kentucky; one shuttle driver is based in Columbus, Ohio; one shuttle driver is located in Saginaw, Michigan; two shuttle drivers drive out of Houghton Lake, Michigan; two shuttle drivers work out of Cadillac, Michigan; three shuttle drivers originate in Grand Rapids, Michigan; and three shuttle drivers are based in Kalamazoo, Michigan.

Shuttle drivers have the same responsibilities regardless of where they originate. However, shuttle drivers generally begin their day near the distribution point where they are domiciled. For example, the shuttle driver based in Columbus does not begin his work day in Kalamazoo or Cadillac. The Saginaw shuttle driver appears to be the only exception in that she can start in Warren or Saginaw depending on the Employer's needs.

When the Saginaw shuttle driver travels to Warren, the trip from Saginaw to Warren is made in her personal vehicle.

The shuttle drivers from Hammond, Indianapolis, and Georgetown do not travel to the Employer's Warren facility as part of their routes, although other shuttle drivers based in the outlying areas do travel to Warren. The Hammond shuttle driver receives her products from a Warren shuttle driver at the Kalamazoo distribution point. Similarly, the Indianapolis shuttle driver travels to the distribution point in Jackson to pick up items deposited there from a Warren shuttle driver. In addition, the Indianapolis shuttle driver picks up bread products to transfer to the shuttle trucks going to Warren. The Georgetown shuttle driver meets shuttles from Warren in Dayton and brings the products back to the Georgetown route drivers.

### **Route Drivers at Warren**

Route drivers based at Warren do not drive in any area other than metropolitan Detroit. They begin their work between 5 a.m. and 7 a.m., and return to Warren between 1 p.m. and 6 p.m. They clock in and out at the Warren facility, and have a work schedule separate from route drivers located elsewhere.

The route drivers park at the Warren facility, pick up their trucks that have been loaded with products during the night, distribute the products to customers described on the route manifest, fill out a driver's manifest indicating what is on each pallet, provide customers with invoices, collect money, checks, or returned products from customers, and maintain sheets documenting returns from stores. Route drivers also pick up products from vendors and to bring back specialty products to the Warren facility.

### **Route Drivers Outside Warren**

Fifty-three route drivers based in areas outside of Warren have the same job duties and hours as the Warren-based route drivers. These route drivers do not frequent the Warren facility, but work out of Ryder facilities located in Saginaw, Kalamazoo, Grand Rapids, Georgetown, Brook Park, and Akron. The Employer utilizes these Ryder facilities for the exchange of product, loads, and trailers, as well as for office space. Route drivers from outlying areas leave their personal vehicles at the Ryder facilities while they perform driving duties. Route drivers at the distribution points call their starting and ending times into the Warren facility and a human resources assistant at the Warren facility makes the appropriate payroll entries.

On their routes, the route drivers travel as far as 75-100 miles from their distribution point. There are six route drivers based in metropolitan Kalamazoo, Michigan; four route drivers based in Columbus, Ohio, some of whom drive into Tennessee; nine route drivers based in Akron, Ohio; five route drivers based in Cadillac,

Michigan; five Grand Rapids, Michigan route drivers; three route drivers based in Hammond, Indiana; and nine route drivers based in Georgetown, Kentucky, who travel as far south as Tennessee and into the Carolinas. Route drivers who are not based in Warren provide any specialty products that they have picked-up to Warren shuttle drivers at the distribution points to bring back to Warren. Route drivers follow directions and receive paperwork from their local lead drivers at the distribution points to and unload their products as directed by the customer.

## **Interchange**

The Michigan route drivers in Houghton Lake, Cadillac, Grand Rapids, and Kalamazoo do not generally encounter route drivers from Indianapolis, Georgetown, or Columbus. Shuttle drivers who are not lead drivers have little interaction with route drivers who do not work at Warren, even if they are at the same distribution site at the same time. Shuttle drivers from Warren do encounter other shuttle drivers from outlying areas at the distribution points and in Warren. Outlying shuttle drivers who travel to Warren sometimes travel on the same road at approximately the same time as the shuttle drivers who originate in Warren. Route drivers based in Warren do not encounter route drivers based in other areas.

There have been a limited number of permanent transfers of employees between distribution points in the past seven years. Keith Kello was a Warren route driver who was injured and then returned as a shuttle driver at Saginaw. It is not clear whether this was at his request. Employee Alan Parcel moved from Warren to Cadillac at his request, although his classification as a route driver did not change. Employee Tim Cross started as a route driver, went to Cadillac or Houghton Lake to work as a shuttle driver, and subsequently returned to Warren as a route driver at his request. Don Gamble was a route driver in Dayton who moved to Indiana and continued as a route driver at his request. Employee Patrick Forrester was a route driver in Warren, moved to Houghton Lake as a route driver, and then became a shuttle driver. His geographic relocation was at his request. There is little, if any, temporary exchange between the drivers at different locations.

## **Meetings**

The Employer held at least one meeting in the past year at the Warren facility for Warren route and shuttle drivers. A notice announcing the meeting, sponsored by the manufacturer of refrigeration and freezing equipment, was posted in Warren. There were lead drivers present, but neither route nor shuttle drivers from areas other than Warren were present except maybe some Kalamazoo drivers.

The Employer has held at least one disciplinary meeting for employees outside of Warren. That meeting took place in Kalamazoo and present were two shuttle drivers, one

from Hammond and one from Warren, as well as a route driver from Kalamazoo. It is unclear what role these various employees took in the meeting, or whether they even participated in the meeting.

The Employer recently held a meeting for Kalamazoo employees at the Kalamazoo distribution point and a separate meeting for the one Jackson employee at the Jackson distribution point to discuss paperwork for new accounts. There is no evidence of any meeting of all of the Employer's drivers being held at Warren or elsewhere.

## **Analysis**

It is well established that a single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *J & L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). To determine whether the presumption has been rebutted, the Board looks at such factors as centralized control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; employee interchange; geographic location; and bargaining history. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837, 839 (1990). The burden is on the party opposing the single-facility unit to present evidence overcoming the presumption. *J & L Plate*, supra. The party challenging the appropriateness of a single-facility unit must be able to show that the day-to-day interests of the employees at the single location have merged with those of the employees at the other location. *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999); *Renzetti's Market*, 238 NLRB 174(1978).

In *Esco Corp.*, 298 NLRB 837 (1990), the Board emphasized the amount of employee interchange and geographic separation as critical elements in determining whether a single-facility presumption had been overcome. Thus, in *Esco* the Board found a single facility appropriate for bargaining despite some history of bargaining in a multi-location unit, the existence of centralized operations and labor relations, limited local autonomy, and common employee skills and functions. See also *New Britain Transportation*, supra, (centralized control over personnel and labor relations alone is not sufficient to rebut the single-location presumption).

Here, route and shuttle drivers based in Warren and other areas share common wages rates, personnel policies, and job duties. Moreover, the Employer clearly maintains centralized control over many aspects of daily operations and labor relations in that it maintains employee records, administers employee discipline, provides the same new hire training to all drivers, and assigns employee routes from its Warren facility for all of its drivers.



However, the Employer also accords a measure of local autonomy to local distribution points. Most sites have offices used for meetings between the lead drivers and the route drivers. At each distribution point other than Grand Rapids, lead drivers “oversee” and direct employees, especially local route drivers. The lead drivers record and report employee absences, distribute money and paperwork to drivers, and oversee the distribution of products to route drivers at each outlying facility. In *Esco*, the Board found that it was significant that there was a “responsible employee” at the excluded warehouse facility, who, although not found to be a statutory supervisor, oversaw the operation.

The Employer relies on *Dayton Transport Corp.*, 270 NLRB 1114 (1984), for the proposition that a system-wide unit is the only appropriate unit. However, in that case drivers were frequently assigned temporarily to different terminals and were provided travel and living allowances. There had been 400-425 such temporary assignments among approximately 85 employees in a one-year period. The Board relied, in part, on the frequency of the interchange on a short term or temporary basis to determine that a single-facility unit was appropriate.

In the instant case, there is no significant employee interchange between the various geographic locations. *Cargill, Inc.*, 336 NLRB No. 118 (2001). For the most part, employees remain based in their distinct geographic location and are not expected to vary their domiciles. To the extent that there have been permanent transfers, such are less indicative of integrated operations than temporary transfers. *Red Lobster*, 300 NLRB 908, 911 (1990). The number of employees involved in the permanent transfers is not particularly significant, and the transfers often occurred at the request of employees and were not mandated by the Employer. The Board has held that employee interchange made at the convenience of employees is “not entitled to much weight in determining the scope of the appropriate unit.” *Bowie Hall Trucking*, 290 NLRB 43 (1988); *Penn Color*, 249 NLRB 1117, 1118 (1980);

Although the Warren shuttle drivers encounter other shuttle drivers in Warren and other distribution points, and to a lesser extent route drivers, the Board has found that such “incidental” contacts do not constitute evidence of interchange. *D&L Transportation*, 324 NLRB 160, 161 (1997). Indeed, the shuttle drivers vary their route almost daily, do not encounter the same drivers, and there is little prolonged interaction. The interaction between shuttle drivers at distribution points and in Warren is more akin to the interaction that route drivers have with customers while unloading products. Such contact does not constitute employee interaction that mandates a system-wide unit. Moreover, route drivers at the distribution points in Hammond, Indianapolis, and Georgetown have no contact with shuttle or route drivers based at Warren or any other distribution point.

In the instant case, the geographic distance between employees' work locations spans at least four different states and hundreds of miles. The Board in *Esco* found the fact that employees were located in three different cities and two different states to be significant. See *Rental Uniform Service*, 330 NLRB 334 (1999) (significant geographic separation of the facilities with 2 locations 22 miles apart and 2 other facilities 50 miles apart.)

There is no bargaining history with regard to the proposed units. In addition, the evidence suggests that the Employer does not hold meetings for all drivers, but, for the most part, holds meetings at the separate distribution centers when events warrant. These factors also mitigate against a system-wide unit.

Accordingly, I find that the presumed appropriateness of a single-facility unit has not been rebutted.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and part-time route and shuttle drivers based out of the Employer's facility located at 14523 Frahzo Road, Warren, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, 21<sup>st</sup> day of May 2003.

(SEAL)

/s/ Stephen M. Glasser

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Classifications

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